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14 *Christopher J. Zyda, and Gail Seneca*

15 UNITED STATES DISTRICT COURT  
16 NORTHERN DISTRICT OF CALIFORNIA  
17 SAN FRANCISCO DIVISION

18 IN RE LUMINENT MORTGAGE CAPITAL, INC.  
19 SECURITIES LITIGATION,

20 This Document Relates To:  
21 ALL ACTIONS

Case No.: C-07-04073 PJH

**DEFENDANTS' REQUEST FOR  
JUDICIAL NOTICE IN SUPPORT OF  
THEIR MOTION TO DISMISS THE  
CONSOLIDATED COMPLAINT**

Date: July 2, 2008  
Time: 9:00 a.m.  
Trial Date: None Set

The Honorable Phyllis J. Hamilton

**TO THE COURT AND TO ALL PARTIES APPEARING IN THIS ACTION:**

Pursuant to Rule 201 of the Federal Rules of Evidence and the doctrine of incorporation by reference, Defendants Luminent Mortgage Capital, Inc. (“Luminent” or the “Company”), S. Trezevant Moore, Jr., Gail Seneca, and Christopher J. Zyda request this Court take judicial notice of the relevant portions of the documents listed below in connection with their motion to dismiss the Consolidated Class Action Complaint (the “Complaint”) for violations of the federal securities laws. True and correct copies of these documents are attached to this Request for Judicial Notice as Exhibits 1 through 27 in support of Defendants’ motion to dismiss, filed concurrently herewith.

**I. THE COURT SHOULD CONSIDER DOCUMENTS INCORPORATED BY REFERENCE IN THE COMPLAINT**

Under the incorporation by reference doctrine, a court may consider on a Rule 12(b)(6) motion documents “whose contents are alleged in a complaint and whose authenticity no party questions, but which are not physically attached to the plaintiff’s pleading.” *In re Silicon Graphics Sec. Litig.*, 183 F.3d 970, 986 (9th Cir. 1999) (internal citation omitted); *In re Portal Software, Inc. Sec. Litig.*, 2005 U.S. Dist. LEXIS 20214, at \*12 (N.D. Cal. 2005) (“[C]ourts are specifically authorized, in connection with a motion to dismiss a securities fraud complaint, to consider documents and filings described in the complaint under the incorporation by reference doctrine.”). Moreover, where a plaintiff fails to attach to the complaint the documents upon which the complaint is premised, a defendant may attach such documents in order to show that they do not support the plaintiff’s claim. *In Re Pac. Gateway Exch., Inc.*, 169 F. Supp.2d 1160, 1164 (N.D. Cal. 2001). The incorporation by reference doctrine is not limited to public records, but may include any document whose contents are alleged in a complaint. *See Meeker v. Belridge Water Storage Dist.*, 2006 U.S. Dist. LEXIS 91775, at \*28 (E.D. Cal. 2006) (“Although these documents are not technically public records and are therefore not judicially noticeable, they are admissible on a motion to dismiss under the ‘incorporation by reference doctrine’ . . . .”); *In re Cooper Mountain Sec. Litig.*, 311 F. Supp. 2d 857, 864 (N.D. Cal. 2004) (finding admissible analyst report and news article because contents were alleged in the complaint).

The Court should consider the following documents (filed herewith), which are incorporated by reference in the Complaint.

Exhibit 1	True and correct copy of Luminent's February 9, 2007 Press Release, filed with the SEC on February 15, 2007.
Exhibit 2	True and correct copy of Luminent's 2006 10-K, filed with the SEC on March 16, 2007.
Exhibit 3	True and correct copy of Luminent's May 10, 2007 Press Release, filed with the SEC on May 11, 2007.
Exhibit 4	True and correct copy of Luminent's 10-Q for the quarter ending March 31, 2007, filed with the SEC on May 10, 2007.
Exhibit 5	True and correct copy of Luminent's May 10, 2007 Earnings Conference Call Transcript.
Exhibit 6	True and correct copy of Luminent's June 27, 2007 Press Release.
Exhibit 7	True and correct copy of Luminent's July 23, 2007 Pharos Newsletter, filed with the SEC on July 23, 2007.
Exhibit 8	True and correct copy of Luminent's July 30, 2007 Press Release, filed with the SEC on July 30, 2007.
Exhibit 9	True and correct copy of Luminent's August 6, 2007 Press Release, filed with the SEC on August 6, 2007.
Exhibit 10	True and correct copy of Luminent's August 7, 2007 Press Release, filed with the SEC on August 7, 2007.
Exhibit 11	True and correct copy of Luminent's 10-Q for the quarter ending June 30, 2007, filed with the SEC on September 26, 2007.
Exhibit 12	True and correct copy of Luminent's November 19, 2007 PowerPoint Presentation, filed with the SEC on November 19, 2007.
Exhibit 13	True and correct copy of Answer and Counterclaim filed by HSBC in <i>Luminent Mortgage Capital, Inc. et al. v. HSBC Securities (USA), Inc.</i> , No. 07 Civ. 9340 (S.D.N.Y.).
Exhibit 14	True and correct copy of UBS Analyst Report, dated February 9, 2007.
Exhibit 15	True and correct copy of Harry Terris, <i>Alt-A Tremors</i> , American Banker, Feb. 22, 2007.
Exhibit 16	True and correct copy of Richard Beales, et al., <i>The Financial Times, Subprime Fears Lift Treasuries</i> , Feb. 27, 2007.

## II. THE COURT SHOULD TAKE JUDICIAL NOTICE OF DOCUMENTS FILED WITH THE SEC

Federal Rule of Evidence 201 allows a court to take judicial notice of facts that are “not subject to reasonable dispute in that [they are] either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b). It is well-established in the Ninth Circuit that courts may take judicial notice of documents filed with the Securities and Exchange Commission (“SEC”). *Dreiling v. Am. Exp. Co.*, 458 F.3d 942, 946 n.2 (9th Cir. 2006); *see also In re Calpine Corp. Sec. Litig.*, 288 F. Supp. 2d 1054, 1076 (N.D. Cal. 2003) (finding that court may take judicial notice of documents filed with the SEC); *Allison v. Brooktree Corp.*, 999 F. Supp. 1342, 1352-53 & n.3 (S.D. Cal. 1998) (taking judicial notice of a defendant’s Form 4 filings even where plaintiff did not allege that defendant engaged in insider trading).

The Court should take judicial notice of the following documents (filed herewith), which have been filed with the SEC.

Exhibit 17	True and correct copy of Form 4 for Ms. Gail Seneca, filed with the SEC on April 13, 2007.
Exhibit 18	True and correct copy of Form 4 for Mr. S. Trezevant Moore, filed with the SEC on April 12, 2007.
Exhibit 19	True and correct copy of Form 4 for Mr. S. Trezevant Moore, filed with the SEC on June 21, 2007.
Exhibit 20	True and correct copy of Form 4 for Mr. Christopher Zyda, filed with the SEC on June 12, 2007.
Exhibit 21	True and correct copy of Form 4 for Mr. Joseph Whitters, filed with the SEC on June 21, 2007.
Exhibit 22	True and correct copy of Form 4 for Mr. Joseph Whitters, filed with the SEC on June 28, 2007.

**III. THE COURT SHOULD TAKE JUDICIAL NOTICE OF PUBLISHED ARTICLES**

Courts may also “take judicial notice under Rule 201 of the existence and contents of published articles.” *United States v. W.R. Grace*, 504 F.3d 745, 766 (9th Cir. 2007) (citing *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955, 1973 n.13 (2007)).

The Court should take judicial notice of the following documents (filed herewith).

Exhibit 23	True and correct copy of Robert K. Steel, Under Secretary for Domestic Finance, U.S. Dept. of the Treasury, Testimony Before the House Committee on Financial Services (Sept. 5, 2007).
Exhibit 24	True and correct copy of Susan Black, <i>The Asset-Backed Commercial Paper Market</i> , Reserve Bank of Australia Bulletin (Jan. 2008).
Exhibit 25	True and correct copy of Alan Greenspan, <i>The Roots of the Mortgage Crisis</i> , Wall St. J., Dec. 12, 2007, at A19.
Exhibit 26	True and correct copy of Eric Dash, <i>The Fed’s Sudden Action Eases a Logjam in Corporate Borrowing</i> , N. Y. Times, Aug. 18, 2007.
Exhibit 27	True and correct copy of Tom Buerkle, <i>Spenders of Last Resort</i> , Institutional Investor, Jan. 2008.

March 31, 2008

Respectfully submitted,

HELLER EHRMAN LLP

By: /s/ Michael L. Rugen  
MICHAEL L. RUGEN

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